Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-5357

In Re: Estate of
Herman Blumreich, Deceased:

Herman Caldwell,

Appellant,

-v-

Helen Kaquatosh, Personal Representative of the
Estate of Herman Blumreich, Deceased, et al.

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN

APPELLANT'S BRIEF IN OPPOSITION TO MOTION TO DISMISS

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Appellant's position is adequately set forth in his Jurisdictional Statement. This brief responds to a number of points brought up in Appellees' motions to dismiss.

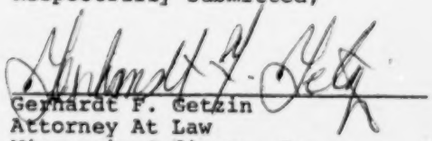
Counsel for the Appellee Personal Representative refers to the declaratory judgment action brought before the Wisconsin Supreme Court as Case No. 76-068. As can be seen from page 1 of the Jurisdictional Statement the matter appealed to the United States Supreme Court from the Wisconsin Supreme Court is the affirmation of an order denying an application of the Appellant for allowances and determination of heirship. This matter was decided by the Wisconsin Supreme Court as Case No. 75-728. This matter is properly before the Court.

Both counsel for Appellees apparently contend that this appeal should be dismissed for want of a substantial federal question. The Appellant's Jurisdictional Statement and pages A-17 through A-27 containing the dissenting opinions of Justices Day and Abrahamson in the Wisconsin Supreme Court (Jurisdictional Statement, Appendix A) set forth arguments showing that there is a substantial federal question. As stated on page 8 of the Jurisdictional Statement, Wis. Stat. 852.05(1) is not a middle ground under Trimble v. Gordon, 430 U.S. 762 (1977). That statute excludes a class: posthumous illegitimates. Since adjudication of paternity is not possible in Wisconsin until the child is born the only way those born after their fathers' deaths can inherit through intestacy is if the fathers admitted paternity in open court or acknowledged paternity in writings. To place such obstacles upon children's right to

inherit is invidious discrimination. It is clear that the significant class of posthumous illegitimates can be included in the intestacy scheme without jeopardizing the orderly settlement of estates. As stated on page 9 of the Jurisdictional Statement, ten states and the United States Congress have established a clear and convincing burden of proof that allows posthumous illegitimates their day in court.

For the reasons stated in Appellant's Jurisdictional Statement the questions presented on this appeal are so substantial as to require reversal of the judgment below or plenary consideration, with briefs on the merits and oral arguments, for their resolution.

Respectfully submitted,



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